

**Letter of Findings: 01-20160241
Indiana Individual Income Tax
For The Tax Years 2012, 2013 & 2014**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individual accused of embezzling money from his employer and a client was properly assessed individual income tax on additional income based upon the best information available from the county prosecutor's office.

ISSUE

I. Individual Income Tax - Best Information Available Assessment.

Authority: IC § 6-3-2-1(a); IC § 6-8.1-5-1(b); IC § 6-8.1-5-1(c); IC § 6-3-4-2(d); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the proposed assessment of individual income tax based upon criminal charges alleging that he had embezzled funds from his employer and a client.

STATEMENT OF FACTS

Taxpayer is a former employee of an Indiana-based retail business and former partner of a wealth management firm. In 2015, Taxpayer was criminally charged with embezzling money from his employer and a client as part of a fraudulent investment scheme. Taxpayer was alleged to have used the embezzled funds for personal expenses from 2012 to 2014. Acting upon information obtained from the county prosecutor's office, the Indiana Department of Revenue ("Department") issued Taxpayer and Taxpayer's former spouse proposed assessments of additional Indiana income tax for tax years 2012, 2013 and 2014. Taxpayer and his ex-wife finalized their divorce in 2015, but she had no involvement in the embezzlement activities during their marriage. For purposes of this Letter of Finding, "Taxpayer" refers only to the husband.

Taxpayer protests the amount of the proposed assessments, but agrees that some additional tax would be owed. An administrative hearing was held. This Letter of Findings results and addresses Taxpayer's protest of the proposed assessments. Additional facts will be provided as necessary.

I. Individual Income Tax - Best Information Available Assessment.

DISCUSSION

Taxpayer protests the proposed assessments and argues that the amount of additional income attributed to him by the Department is incorrect. During the administrative hearing, Taxpayer asserted that the proposed assessments were premature and unsubstantiated because the criminal proceedings were still pending. Taxpayer also argued that the proposed assessments were based on amounts greater than the total amount that he was accused of embezzling.

As with any assessment of additional tax, Taxpayer bears the burden of establishing that the Department's assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Indiana imposes an income tax on "the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a).

The Department issued the proposed assessments under the authority of IC § 6-8.1-5-1(b), which states:

If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. (Emphasis added).

During the hearing, Taxpayer explained that the criminal case against him was still pending and that the amount he would owe in additional income tax should be based upon the amount that was ultimately determined to have been embezzled from his employer and client. Taxpayer was provided additional time following the hearing in which to provide additional information regarding the status of the criminal proceedings against him; however, he failed to provide any additional information by the agreed upon deadline.

Taxpayer did not provide any documentation in support of his argument that the proposed assessments, based upon information obtained by the Department from the county prosecutor's office, were unwarranted or premature. In addition, Taxpayer provided no documentation to substantiate his argument that the amount of tax assessed was based on an amount greater than what he was ultimately determined to have embezzled. Therefore, Taxpayer has failed to meet his burden under IC § 6-8.1-5-1(c) of proving that the Department's proposed assessment was wrong.

With respect to Taxpayer's former spouse's liability for the proposed assessments, IC § 6-3-4-2(d) provides:

Where a joint return is made by husband and wife pursuant to the Internal Revenue Code, a joint return shall be made pursuant to this article. Where a joint return is filed by a husband and wife hereunder, one spouse shall have no liability for the tax imposed by this article upon the income of the other spouse.
(Emphasis added)

Taxpayer stated during the hearing that his spouse at the time was not involved in the embezzlement activities, and no criminal charges were filed against Taxpayer's ex-wife. Taxpayer and his former spouse filed a joint return for 2012, but for tax years 2013 and 2014 Taxpayer's ex-wife filed single returns and Taxpayer did not file returns. The Department assessed the additional tax on income attributable solely to Taxpayer, not Taxpayer's former spouse. Therefore, Taxpayer's ex-wife has no liability for the proposed assessments at issue in this protest.

FINDING

Taxpayer's protest is respectfully denied. Taxpayer's former spouse shall have no liability for the proposed assessment of tax imposed on Taxpayer.

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